

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 984

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

AN ACT

RELATING TO TOBACCO; CHANGING AND ADDING DEFINITIONS IN THE  
CIGARETTE TAX ACT; EXPANDING CIGARETTE PACKAGING AMOUNTS;  
PROVIDING FOR EXCISE TAX RATES BASED ON PACKAGING; AMENDING THE  
CIGARETTE TAX ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-12-2 NMSA 1978 (being Laws 1971,  
Chapter 77, Section 2, as amended) is amended to read:

"7-12-2. DEFINITIONS.--As used in the Cigarette Tax Act:

A. "cigarette" means:

(1) any roll of tobacco or any substitute for  
tobacco wrapped in paper or in ~~[anything that is not one~~  
~~hundred percent]~~ any substance not containing tobacco  
~~["cigarette" includes bidis and kreteks and small cigars sold~~  
~~in packages similar to cigarettes, unless the cigar is wrapped~~

.169359.1

underscored material = new  
[bracketed material] = delete

1 ~~in one hundred percent tobacco~~; or

2 (2) any roll of tobacco that is wrapped in any  
3 substance containing tobacco, other than one hundred percent  
4 natural leaf tobacco, which because of its appearance, the type  
5 of tobacco used in the filler, its packaging and labeling, or  
6 its marketing and advertising, is likely to be offered to, or  
7 purchased by, consumers as a cigarette, as described in  
8 Paragraph (1) of this subsection, and "cigarette" includes  
9 bidis and kreteks;

10 B. "contraband cigarettes" means cigarette packages  
11 with counterfeit stamps, counterfeit cigarettes, cigarettes  
12 that have false or fraudulent manufacturing labels, cigarettes  
13 not sold in packages of five, ten, twenty or twenty-five and  
14 cigarette packages without the tax or tax-exempt stamps  
15 required by the Cigarette Tax Act;

16 C. "department" means the taxation and revenue  
17 department, the secretary of taxation and revenue or any  
18 employee of the department exercising authority lawfully  
19 delegated to that employee;

20 D. "distributor" means a person licensed pursuant  
21 to the Cigarette Tax Act to sell or distribute cigarettes in  
22 New Mexico. "Distributor" does not include:

23 (1) a retailer;

24 (2) a cigarette manufacturer, export warehouse  
25 proprietor or importer with a valid permit pursuant to 26

.169359.1

1 U.S.C. 5713, if that person sells cigarettes in New Mexico only  
2 to distributors that hold valid licenses under the laws of a  
3 state or sells to an export warehouse proprietor or to another  
4 manufacturer; or

5 (3) a common or contract carrier transporting  
6 cigarettes pursuant to a bill of lading or freight bill, or a  
7 person who ships cigarettes through the state by a common or  
8 contract carrier pursuant to a bill of lading or freight bill;

9 E. "license" means a license granted pursuant to  
10 the Cigarette Tax Act that authorizes the holder to conduct  
11 business as a manufacturer or distributor of cigarettes;

12 F. "manufacturer" means a person that manufactures,  
13 fabricates, assembles, processes or labels a cigarette or that  
14 imports from outside the United States, directly or indirectly,  
15 a finished cigarette for sale or distribution in the United  
16 States;

17 G. "master settlement agreement" means the  
18 settlement agreement and related documents entered into on  
19 November 23, 1998 by the state and leading United States  
20 tobacco product manufacturers;

21 H. "package" means an individual pack, box or other  
22 container; "package" does not include a container that itself  
23 contains other containers, such as a carton of cigarettes;

24 I. "retailer" means a person, whether located  
25 within or outside of New Mexico, that sells cigarettes at

.169359.1

1 retail to a consumer in New Mexico and the sale is not for  
2 resale;

3 J. "stamp" means an adhesive label issued and  
4 authorized by the department to be affixed to cigarette  
5 packages for excise tax purposes and upon which is printed a  
6 serial number and the words "State of New Mexico" and "tobacco  
7 tax";

8 K. "tax stamp" means a stamp that has a specific  
9 cigarette tax value pursuant to the Cigarette Tax Act; and

10 L. "tax-exempt stamp" means a stamp that indicates  
11 a tax-exempt status pursuant to the Cigarette Tax Act."

12 Section 2. Section 7-12-3 NMSA 1978 (being Laws 1971,  
13 Chapter 77, Section 3, as amended) is amended to read:

14 "7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

15 A. For the privilege of selling, giving or  
16 consuming cigarettes in New Mexico, there is levied an excise  
17 tax at the [~~rate of four and fifty-five hundredths cents~~  
18  ~~(\$.0455)~~] following rates for each cigarette sold, given or  
19 consumed in this state:

20 (1) four and fifty-five hundredths cents  
21  (\$.0455) if the cigarettes are packaged in lots of twenty or  
22  twenty-five;

23 (2) nine and ten-hundredths cents (\$.091) if  
24  the cigarettes are packaged in lots of ten; or

25 (3) eighteen and twenty-hundredths cents

.169359.1

1 (\$.182) if the cigarettes are packaged in lots of five.

2 B. The tax imposed by this section shall be  
3 referred to as the "cigarette tax".

4 Section 3. Section 7-12-5 NMSA 1978 (being Laws 1971,  
5 Chapter 77, Section 5, as amended) is amended to read:

6 "7-12-5. AFFIXING STAMPS.--

7 A. Except as provided in Section 7-12-6 NMSA 1978,  
8 all cigarettes shall be placed in packages or containers to  
9 which a stamp shall be affixed. Only a distributor with a  
10 valid license issued pursuant to the Cigarette Tax Act may  
11 purchase or obtain unaffixed tax-exempt stamps or tax stamps.  
12 A distributor shall not sell or provide unaffixed stamps to  
13 another distributor, manufacturer, export warehouse proprietor  
14 or importer with a valid permit pursuant to 26 U.S.C. 5713 or  
15 any other person.

16 B. Stamps shall be affixed by the distributor to  
17 each package of cigarettes to be sold or distributed in New  
18 Mexico within ten days of receipt of those packages.

19 C. A distributor shall apply stamps only to  
20 packages of cigarettes that it has received directly from a  
21 manufacturer or importer of cigarettes that possesses a valid  
22 and current permit pursuant to 26 U.S.C. 5713.

23 D. Packages shall contain cigarettes in lots of  
24 five, ten, twenty or twenty-five.

25 E. Unless the requirements of this section are

.169359.1

1 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall  
2 be affixed to each package of cigarettes subject to the  
3 cigarette tax and a tax-exempt stamp shall be affixed to each  
4 package of cigarettes not subject to the cigarette tax pursuant  
5 to Section 7-12-4 NMSA 1978.

6 F. A tax-exempt stamp is not an excise tax stamp  
7 for purposes of determining units sold pursuant to Section  
8 6-4-12 NMSA 1978.

9 G. Stamps shall be affixed inside the boundaries of  
10 New Mexico, unless the department has granted a license  
11 allowing a person to affix stamps outside New Mexico."